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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED 07/23/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/583,334

Applicant(s)

KEITHLY ET AL

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21,23-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21,23-26 and 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

Any non-reference information on the IDS has been marked off by the Examiner as this information cannot be printed on a patent. The information however, has been considered. Applicant's should furnish a copy of the published English version of the Bonaventura reference as noted on page 11 of their arguments.

### ***Claim Rejections - 35 USC § 112***

Claims 1-21, 23 - 26, 28-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No basis is seen in the specification for the phrase "which is a pasteurized juice".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21, <sup>2</sup>~~22~~-26, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonaventura et al. in view of Citrus Industry, June 99 and Pao et al. and further in view of Gmitter, Jr. (characteristics and potential of new citrus cultivars), and Widmer et al. (flavonoids in ambersweet orange and the impact on juice

adulteration detection) and of Braddock (Handbook of citrus by-products and processing technology).

The claims are rejected for reasons of record and for these further reasons. The independent claims now require that the not – from –concentrate (NFC) juice is a pasteurized juice. However, Braddock discloses that it is known to heat treat juices which cannot be sold immediately. Heat treatment is known to pasteurize the product as pasteurization temperatures are reached. Therefore, it would have been obvious to heat- treat the NFC juice so that it would have been pasteurized in the processes of the above references if the product were to be sold commercially. Also, Gmitter, Jr. disclose that it known to use information about juice quality and maturity season as major guiding forces for the selection process in tree breeding (page 165, last paragraph). Widmer et al. disclose that it is known to use early maturing fruit which has a rich orange flesh color to improve the color of early season processed juice (page 21, lines 5-12). Therefore, it would have been obvious to use fruit with various required characteristics with other fruit from various seasons, in order to improve its taste, flavor, acidity and color in the process of Bonaventura.

### **ARGUMENTS**

Applicant's arguments filed 6-19-02 have been fully considered but they are not persuasive. Applicants argue that since newly cited references disclose NFC juice that is heat processed that they should be allowed to state that the product is pasteurized into their claims. Following this line of reasoning, various a sundry limitations could be

added because they are generally known, even though the application as a whole is not drawn to that limitation, but would possibly distinguish the claims from a reference.

The arguments as to the use of pasteurization are moot due to the new reference.

Applicants argue as to the particular types of oranges used in Bonaventura, and to whether it teaches blending juices using the claimed cultivars. However, In re Boesch was applied to say that choosing a particular cultivar to achieve particular color, brix and taste was due to result effective variables. Certainly, of the hundreds of cultivars, the art shows that it is common to show the Brix, color, and acidity of the various juices. If one wanted a juice containing a particular color, brix and flavor, one would blend juices containing such variables. It is not as if many characteristics are cited, but the above are commonly cited together. Certainly, picking out juices that met one's requirements would have been within the skill of the ordinary worker, because these determinations are common in the fruit juice business. See Horticultural Field day, St. Cloud, Florida, Dec. 2, 1992, page 7 and 9, which shows that these are common determinations for oranges. Granted the claimed cultivars are not shown, but the concept of using blends of early middle or late season fruit is disclosed (abstract). Certainly, this concept can be followed as to the instant claims and a product made using juice from various seasons. The reference also discloses that a positive correlation was observed between anthocyanin content and juice quality stability. As the anthocyanin content relates to "color", then the use of juices from the 3 seasons can be affected by the oranges used from various seasons.

Applicants argue that Bonaventura et al. do not teach blending their blood oranges with juice of later season cultivars. The reference states "juice was obtained from blends of 2 or 3 of the varieties using refrigerated early, middle or late season from sources...". This includes blending juice of early with late season sources.

Applicants discuss applying Antonie to the present situation by looking at the invention as a whole. Certainly, looking at Bonaventura as a whole, one can see that it is known to blend juices from various seasons and one would obviously do this based on color and flavor, if one wanted to achieve a product similar to that grown in the prime growing season, because this is how the characteristics of juices are measured.

Applicants argue that the reference to Citrus Industry does show that various characteristics are known for oranges that ripen at various times, but that the reference does not show their exact invention as to cultivars. However, the characteristics of each orange cultivar can be easily determined as shown by the reference. Picking out a cultivar that has the desired brix, flavor, taste is seen as optimization, because the characteristics are their to chose from.

Applicants argue as to Pao et al. that it is not disputed that citrus juices can be improved by blending different citrus juices of differing maturities and distinguishes the references by saying that their juices are pasteurized since they are not from concentrate juices. However, as stated before, no basis is seen for whether the juice is pasteurized in the specification. It seems like applicants major concern was to find cultivars which had particular taste and color characteristics and that this juice was to be a NFC juice which according to the references is a pasteurized juice, like the

references, which also show the blending of juices, which most likely if used commercially would also use the age old process of pasteurization.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 7-18-02

  
HELEN PRATT  
PRIMARY EXAMINER